* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 641 of 2006**

Judgment reserved on: January 17, 2007

% Judgment delivered on: May 9, 2007

The Commissioner of Income Tax-V
New Delhi. ...Appellant

Through Mr. Sanjiv Sabharwal, Adv.

Versus

M/s Oracle Software India Ltd.
705, International Trade Tower
Nehru Place, New Delhi ...Respondent

Through Mr. M.S. Syali, Senior Advocate
with Mr. Saubhagya Aggarwal, Adv.

WITH

ITA No.785 of 2006

The Commissioner of Income Tax-V
Central Revenue Building, New Delhi. ...Appellant

Through Mr. Sanjiv Sabharwal, Adv.

Versus

M/s Oracle Software India Ltd.
705, International Trade Tower
Nehru Place, New Delhi ...Respondent

Through Mr. M.S. Syali, Senior Advocate
with Mr. Saurabh Aggarwal, Adv.

ITA No. 811 of 2006

The Commissioner of Income Tax-V
New Delhi. ...Appellant

Through Mr. Sanjiv Sabharwal, Adv.

Versus

M/s Oracle Software India Ltd.
705, International Trade Tower
Nehru Place, New Delhi ...Respondent

Through Mr. M.S. Syali, Senior Advocate
with Mr. Saurabh Aggarwal, Adv.

ITA No. 815 of 2006

The Commissioner of Income Tax-V
New Delhi. ...Appellant

Through Mr. Sanjiv Sabharwal, Adv.

Versus

M/s Oracle Software India Ltd.
705, International Trade Tower
Nehru Place, New Delhi ...Respondent

Through Mr. M.S. Syali, Senior Advocate
with Mr. Saurabh Aggarwal, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

The Revenue is aggrieved by an order dated 28th October, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench B (for short the Tribunal) in ITA Nos.328D/98, 1783/D/99 and 916/D/2000 relevant for the assessment years 1994-95 to 1996-97.

2. Although three issues arose before the Tribunal, we are really concerned with two issues that have been urged by the Revenue.

3. The assessee is a 100% subsidiary of Oracle Corporation, USA and was incorporated with the object of developing, designing, improving, producing, marketing, distributing, buying, selling and

importing of computer software. The assessee is entitled to sub-license the software developed by Oracle Corporation, USA to its local clients.

4. The assessee imports master copies of the software from Oracle Corporation, USA. These are then duplicated on blank discs, packed and sold in the market along with the relevant brochures and information by way of a sub-license. The assessee pays a lump sum amount to Oracle Corporation, USA for the import of the master copy and in addition thereto it also pays royalty at 30% of the list price of the licensed product.

5. The first issue that we are concerned with is the disallowance of royalty paid by the assessee to Oracle Corporation, USA on the ground that TDS was not paid by the assessee in the relevant previous year; the second issue relates to the allowability of a deduction under Section 80IA of the Income Tax Act, 1961 (the Act).

6. The issue regarding disallowance of royalty is relevant for the assessment years 1994-95 and 1995-96. The Assessing Officer

noted that for the assessment year 1994-95, tax was deducted at source on the royalty paid by the assessee and after deduction, it was deposited on 6th September, 1994. For the assessment year 1995-96, tax was deducted at source and deposited on 6th July, 1995. The Assessing Officer took the view that in view of Section 40(a)(i) of the Act, the assessee was not entitled to a deduction in respect of payment of royalty to Oracle Corporation, USA. This provision reads as under:-

> "**40. Amounts not deductible.** Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession", –
>
> (a) in the case of any assessee –
>
> (i) any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable outside India, on which tax has not been paid or deducted under Chapter XVII-B.
>
> Provided that where in respect of any such sum, tax has been paid or deducted under Chapter XVII-B in any subsequent year, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid or deducted."

The interpretation given by the Assessing Officer to the above provision was that tax must not only be deducted but also actually paid within the relevant previous year.

7. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT (A)] who relied upon a decision of the Rajasthan High Court in ***Additional Commissioner of Income-Tax v. Farasol Ltd., (1987) 163 ITR 364*** for deciding in favour of the assessee.

8. We do not think the decision rendered by the Rajasthan High Court is quite apposite. However, in so far as we are concerned, the Tribunal noted that there is no dispute that the assessee deducted the tax during the relevant year. The Assessing Officer made the disallowance only on the ground that payment was actually made in the next financial year. On a plain reading of Section 40 (a)(i) of the Act, as long as the tax was deducted within the year, as was done in the present case, the provisions of the Section come into play and the assessee must, therefore, be entitled to its benefit. There is no dispute about the fact that tax for the assessment year 1994-95 was deducted during the relevant previous year (but paid on 6th September, 1994). For the assessment year 1995-96 the tax was deducted during the relevant previous year and while most of the amount (Rs.1,97,23,418/-) was paid

during the relevant previous year, a small amount of Rs.11,011/- was deposited on 6th July, 1995. On a reading of Section 40(a)(i) of the Act, we are of the view that the Assessing Officer erred while the appellate authorities rightly held in favour of the assessee. No substantial question of law arises for consideration.

9. As regards the second issue pertaining to Section 80IA of the Act, the question that arose was whether the assessee manufactures any goods.

10. As noted above, the assessee duplicates the software from the imported master copies by formatting a blank disc and copying the software onto it. The duly formatted disc with the software is then packed and sold in the market along with the relevant brochures. According to the Assessing Officer, this did not amount to manufacture and this view was affirmed by the CIT (A).

11. The Tribunal made a note that in fact the assessee converted blank discs (which are raw material for it) into software loaded discs

with the help of the imported master copy. This by itself amounted to a change or a conversion of the blank disc into a different and distinct commercial product which was then marketed after labelling and packing.

12. The Tribunal took into consideration the decision of the Supreme Court in ***Gramophone Co. of India Ltd. v. Collector of Customs, 1999 (114) ELT 770*** wherein the Supreme Court considered the meaning of the word "manufacture" as used in the Central Excise Act, 1944. The Supreme Court noted that pre-recorded audio cassettes are known in the market as goods different and distinct from blank audio cassettes. The two have different uses and since the appellant therein was converting blank audio cassettes into recorded audio cassettes which were sold in the market as such, it was carrying out a manufacturing activity.

13. It is true that the meaning of the word "manufacture" as used in the Central Excise Act, 1944 cannot be automatically applied to the provisions of the Income Tax Act, 1961, but in the absence of any

definition of the word “manufacture” as used in Section 80IA of the Act, one has to appreciate its meaning as commonly understood by any reasonable person. Looked at from this point of view, the conversion of a blank disc, which has its own utility, to a software loaded disc clearly amounts to a manufacturing activity because a new commercial product enters the market which is distinct and different product from the blank disc.

14. On this issue, we see no reason to differ with the view taken by the Tribunal which merely follows the decision of the Supreme Court. Under the circumstances, we are clearly of the view that the assessee would be entitled to the benefit of Section 80IA of the Act since it carries out a manufacturing activity.

15. No substantial question of law arises for consideration. The appeals are dismissed.

Madan B. Lokur, J

May 9, 2007 V.B. Gupta, J
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